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RECORDATION NO. 10131 Filed 1425

FEB 22 1979 -4 40 PM  
INTERSTATE COMMERCE COMMISSION

10131 A  
RECORDATION NO. 10131 Filed 1425

February 22, 1979

FEB 22 1979 -4 40 PM  
INTERSTATE COMMERCE COMMISSION

Secretary of the  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Sir:

Enclosed for recordation in the order listed below pursuant to 49 U.S.C. 11303 please find the original and three counterparts of each of the following documents:

(1) Letter (the Purchase Order Assignment) dated as of February 13, 1979, from Rex to Twitter, pursuant to which Rex assigns to Twitter certain rights under a purchase order with Pullman Standard Division of Pullman, Incorporated.

(2) Conditional Sale Agreement (the Conditional Sale Agreement) dated as of February 13, 1979, among Twitter, Inc., a Delaware corporation (Twitter), as Vendor, Skiva International, Inc., a New York corporation (Skiva), as Vendee, and Rex Railways, Inc., a New Jersey corporation (Rex).

Also enclosed is a check for \$100.00 payable to Interstate Commerce Commission in payment of the fee for recording of the Conditional Sale Agreement (\$50.00) and Purchase Order Assignment (\$50.00).

The names and addresses of the parties to the Conditional Sale Agreement and to the Purchase Order Assignment are as follows:

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Counterparts

Peter Lehman

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INTERSTATE COMMERCE COMMISSION

Secretary of the  
Interstate Commerce Commission  
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INTERSTATE COMMERCE COMMISSION

1. Twitter, Inc.  
616 Palisade Avenue  
Englewood Cliffs, New Jersey, 07632
2. Skiva International, Inc.  
1350 Broadway  
New York, New York 10018
3. Rex Railways, Inc.  
616 Palisade Avenue  
Englewood Cliffs, New Jersey 07632

Rex Noreco, Inc. proposes to enter into guaranty agreement pursuant to which it will, subject to the terms and conditions thereof, guarantee the performance by Skiva of its obligations under the Conditional Sale Agreement. The address of Rex-Noreco, Inc. is 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

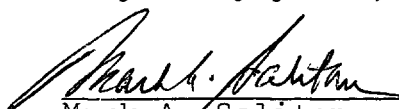
The equipment covered by the Conditional Sale Agreement and Purchase Order Assignment consists of 100 70-ton 50' 6" XM box cars, having A.A.R. mechanical designation "XM" and lessee identifying marks of LCRC 2001 through and including 2100.

The 100 box cars referred to above will become subject, along with other box cars, to a lease with Lenawee County Railroad Company, Inc., Box 278, Adrian, Michigan 49221, a Michigan corporation, as Lessee. The lease bears ICC Recordation No. 9453 and was recorded at 9:20 A.M. on June 22, 1978.

Please return stamped copies of the enclosed documents to:

Battle, Fowler, Jaffin, Pierce & Kheel  
280 Park Avenue  
New York, New York 10017  
Attention: Thomas E. Kruger

Very truly yours,

  
Mark A. Salitan  
President  
Twitter, Inc.

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INTERSTATE COMMERCE COMMISSION

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CONDITIONAL SALE AGREEMENT

DATED AS OF FEBRUARY 13, 1979

AMONG

TWITTER, INC.  
VENDOR

SKIVA INTERNATIONAL, INC.  
VENDEE

AND

REX RAILWAYS, INC.

(COVERING UP TO 100 GENERAL PURPOSE BOXCARS)

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Filed and recorded with the Interstate Commerce Commission  
pursuant to 49 U.S.C. 11303 on February \_\_, 1979, at \_\_\_\_\_,  
Recordation No. \_\_\_\_\_.

CONDITIONAL SALE AGREEMENT dated as of February 13, 1979, among TWITTER, INC., a Delaware corporation, as Vendor (hereinafter called the "Owner" or "Vendor"), REX RAILWAYS, INC., a New Jersey Corporation (hereinafter referred to as "Rex" or "Manager") and SKIVA INTERNATIONAL, INC., a New York corporation, (hereinafter called the "Vendee").

WHEREAS, The Provident Bank, an Ohio banking corporation (hereinafter "Lender"), Vendor, Rex, Vendee and Rex-Noreco, Inc., a New Jersey corporation (hereinafter the "Guarantor") have entered into a Finance Agreement of even date herewith (hereinafter the "Finance Agreement"); and

WHEREAS, by letter dated April 20, 1978, from PULLMAN STANDARD DIVISION of PULLMAN INCORPORATED (hereinafter "Builder") to Rex, which letter has been acknowledged and accepted by Rex, the Guarantor, Builder acknowledged receipt of Rex's telex order dated April 18, 1978, covering Two Hundred (200) 70-ton, 50'6" Box Cars in accordance with Builder's proposal dated April 13, 1978, and bidding specification No. 3722 dated September 15, 1977, (such letter of April 20, 1978, and all documents referred to therein being hereinafter referred to as the "Purchase Order"); and

WHEREAS, by letter dated as of February 13, 1979, from Rex to Vendor (hereinafter the "Letter of Assignment") Rex assigned to Vendor and Vendor accepted all of Rex's right, title and interest under the Purchase Order to the extent of the first One Hundred (100) Box Cars delivered thereunder (hereinafter collectively the "Equipment" or "Units", and individually a "Unit"), subject to Rex's obligations thereunder in respect of such One Hundred (100) cars, which Units are described in Annex A hereto; and

WHEREAS, the Lender is willing to acquire, pursuant to an Agreement and Assignment dated as of the date hereof (hereinafter "Assignment"), the right, security title and interest of the Vendor under the Conditional Sale Agreement in the Equipment, all upon and subject to the terms and conditions hereinafter set forth; and

WHEREAS, the Vendee is contracting with the Manager to manage and maintain the Equipment pursuant to a Management Agreement dated as of the date hereof (hereinafter the "Management Agreement"); and

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WHEREAS, the Lender and the Guarantor are contracting in a Guarantee and Agreement (hereinafter "Guarantee") in substantially the form annexed as Exhibit D to the Finance Agreement, for the payment of the Conditional Sale Indebtedness (as defined herein) and for the guarantee of the obligations of the Owner; and

WHEREAS, the Manager has entered into an equipment schedule (hereinafter "Equipment Schedule") with Lenawee County Railroad Company, Inc. (hereinafter "Lessee") signed on behalf of the Manager on October 4, 1978, and signed on behalf of the Lessee on October 9, 1978, which Equipment Schedule is attached to and amends a Lease Agreement made as of September 23, 1977, between the Manager and the Lessee and together with the Lease provides that the Manager entered into the Equipment Schedule as principal or agent for parties to be named in an amendment (hereinafter "Designating Amendment") to the Equipment Schedule to be delivered to the Lessee in accordance with the provisions of Section 1(a) of the Lease, as amended by the Equipment Schedule (such Lease Agreement, Equipment Schedule, and Designating Amendment being hereinafter referred to as the "Lease"); and

WHEREAS, the Manager and the Owner will deliver to the Lessee a Designating Amendment identifying the Owner as the principal for whom the Manager is acting with respect to, and as the owner of, the Equipment (or so much thereof as if delivered on or prior to April 30, 1979) and the Equipment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto hereby agree as follows:

ARTICLE 1. Assignment; Definition; Additional Agreements.  
The parties hereto contemplate that the Vendee will furnish that portion of the purchase price for the Equipment as is required under Subparagraph (a) of the third paragraph of Article 4 hereof, and that an amount equal to the balance of said purchase price shall be paid to the Builder by an Assignee of the Vendor's right, title, and interest under this Agreement pursuant to an Agreement and Assignment between the Vendor and the Lender. (hereinafter the "Assignment").

The Vendee will assign to the Lender, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title and interest of the Vendee in

and to the Management Agreement and in and to any subsequent agreement affecting the Equipment pursuant to the Management Agreement Assignment in and to the Lease pursuant to the Lease Assignment.

Notwithstanding any other provision contained herein, in the event that on the Closing Date (as hereinafter defined) the Builder does not receive from the Vendee and the Lender pursuant to this Agreement, in cash, the aggregate amount of the Invoiced Purchase Price (as hereinafter defined) for all Units for which settlement is then being made, then such Units as to which the aggregate Invoiced Purchase Price is not received in cash by the Builder shall be excluded herefrom. If any Unit shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto evidencing the limitation of this Agreement to the Units not so excluded herefrom.

ARTICLE 2. Construction and Sale. Pursuant to the Purchase Order and this Agreement, the Vendor shall purchase the Equipment set forth in Annex A hereto from the Builder, and simultaneously will sell and deliver such Equipment to the Vendee, and the Vendee will purchase from the Vendor and accept delivery of and pay for (as hereinafter provided) the Equipment, each Unit of which shall be constructed in accordance with the specifications referred to in the first Recital of this Agreement and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendor and the Vendee (which specifications, and modifications, if any, are hereinafter called the "Specifications"). The design, quality, and component parts of each Unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission (hereinafter called the "ICC") requirements and specifications and to all standards recommended by the Association of American Railroads (hereinafter called the "AAR") reasonably interpreted as being applicable to railroad equipment of the character of such Unit, and each such Unit will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Vendor will deliver the Units of the Equipment to the Vendee during the delivery period specified in Annex A hereto at Builder's tracks, Bessemer, Alabama or such other place as Builder

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shall deliver the cars to the Vendor; provided, however, that delivery of any Unit of the Equipment shall not be made until this Agreement has been filed and recorded with the ICC in accordance with 49 U.S.C. 11303; provided, further, that the Vendor shall have no obligation to deliver any Unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or the occurrence of any Event of Default (as defined in Article 15 hereof), or an event which, with the lapse of time and/or notice, would constitute such an Event of Default.

The Vendor's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's or the Vendor's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities, and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or allocation of materials or delays of carriers or subcontractors; provided, however, it is expressly understood and agreed that the Vendor's obligations hereunder shall be performed by the Builder under the Purchase Order, and Vendor shall have no obligations or liability for nonperformance hereunder.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto evidencing the limitation of this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee. Upon completion of the sample Unit and each Unit of the Equipment, such Unit or Units shall be presented to an authorized inspector of the Vendee (who may be an employee or agent of the Vendee or the Vendor) for inspection at the Builder's plant or the place specified for delivery of such Unit or Units. If each such Unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee, on an acceptable date agreed upon by the Builder and the Vendor,

shall execute and deliver to the Builder and the Vendor a certificate of acceptance substantially in the form annexed as Annex G hereto (hereinafter called a "Certificate of Acceptance") stating that such Unit or Units have been delivered, inspected and accepted on behalf of the Vendee on the time and date indicated in such Certificate of Acceptance (such date being hereinafter called the "Delivery Date") and are marked in accordance with Article 9 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per Unit of the Equipment to Vendee are set forth in Annex A hereto. Such base price or prices may be increased as is agreed to by the Vendor and the Vendee, in the independent exercise of their sole and absolute discretion with the prior consent of the Lender, which consent of Lender may be unreasonably withheld. The term "Invoiced Purchase Price" as used herein shall mean that base price or prices as set forth in Annex A, as so increased, multiplied by the number of Units delivered and accepted by Vendee on or before the Closing Date.

The Equipment shall be settled for in one group of One Hundred (100) Units of the Equipment delivered to and accepted by the Vendee (or if less than One Hundred (100) Units are delivered and accepted by April 30, 1979, then such lesser number of Units as are delivered and accepted by such date). The term "Closing Date" with respect to any Units shall mean such date not later than April 30, 1979, (hereinafter called the "Cut-Off Date") as shall be fixed by the Vendor by written notice delivered to the Vendee and the Lender at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and any other day on which banking institutions in Cincinnati, Ohio are authorized or obligated to remain closed.

The Vendor hereby acknowledges its obligation to purchase the Equipment from the Builder pursuant to the Purchase Order for sale to the Vendee hereunder. The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor or its designee, at such place as the Vendor may designate, the Invoiced Purchase Price, plus an amount equal to all costs and expenses to be paid by Vendee pursuant to Article 20 hereof (the aggregate of such amount being hereinafter called the "Purchase Price"), plus payments into the Maintenance Escrow Account (as hereafter defined in Article 17 hereof) as follows:

(a) On the Closing Date with respect to the Units to the Builder an amount equal to the greater of 25% of the Invoiced Purchase Price of such Units, or the amount by which the Invoiced Purchase Price for such Units exceeds Twenty-Six Thousand, Two Hundred Sixty-Two Dollars and seventy-five cents (\$26,262.75) per Unit;

(b) To the Vendor, in One (1) quarterly payment of interest only in arrears, and One Hundred Seventy-Seven (177) equal consecutive monthly installments in arrears as hereinafter provided the amount of the Invoiced Purchase Price not paid pursuant to Clause (a) above, together with interest thereon as set forth below; and

(c) To the Vendor, in One (1) quarterly payment in arrears, and One Hundred Seventy-Seven (177) equal consecutive monthly installments in arrears, the amount of the Maintenance Escrow Account in the manner and subject to the terms and provisions of Article 17 hereof.

The portion of the Invoiced Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the "Conditional Sale Indebtedness") shall be payable as follows: (i) on May 31, 1979, Vendee shall pay interest on the Conditional Sale Indebtedness at the interest rate hereinafter set forth from the Closing Date to and including May 31, 1979; and (ii) Vendee shall pay, starting on June 30, 1979, and on the last day of each month thereafter, to and including January 30, 1994, equal payments of Conditional Sale Indebtedness principal and interest, with interest payable monthly in arrears, each such payment to be an amount equal to 1.2723% of the Conditional Sale Indebtedness which amount is calculated so as to repay all principal and interest due and owing upon the last such monthly payment. Conditional Sale Indebtedness shall bear interest at the rate of 13% per annum from the Closing Date on which such funds are disbursed. The installments due under subparagraph (b) of the preceding paragraph shall completely amortize the Conditional Sale Indebtedness and all interest with respect to such indebtedness.

The Vendor will furnish to the Manager and Vendee promptly after the Cut-Off Date a schedule, in such number of counterparts as shall be requested by the Vendee and in form and substance satisfactory to Vendee, showing the aggregate respective amounts of principal and interest payable in installments.

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As additional security for the payments due under this Agreement, Vendee hereby assigns to Vendor, all receipts, revenues, earnings, deposits, or other payments of whatever kind or nature, due and owing to the Vendee generated by the Equipment; and all payments to the Manager or Lessee or any other manager or user of the Equipment from Vendee shall be subordinated to Vendor's payments under this Agreement.

Interest under this Agreement shall be determined on the basis of a 360-day year composed of twelve (12) 30-day months, with periods of less than a full calendar month being calculated on the basis of actual days elapsed.

The Vendee will pay interest, to the extent legally enforceable, at the rate of Four Percent (4%) per annum in excess of the interest rate then payable on the Conditional Sale Indebtedness, upon all payments remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall be payable in immediately available funds. Except as provided in Article 7 hereof and in the next succeeding paragraph, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

There shall be no voluntary prepayment of the Conditional Sale Indebtedness during the first seven (7) years of the term thereof from and after the Closing Date. In the event of an involuntary prepayment of the Conditional Sale Indebtedness during the first seven (7) years of the term thereof, excluding a prepayment in the event of a Casualty Occurrence (as hereinafter defined), Vendee shall pay a prepayment premium of Five Per Cent (5%) of the principal amount so prepaid. Vendee shall have the right to prepay the Conditional Sale Indebtedness at any time after the first seven (7) years of the term thereof, in whole at any time or from time to time in part, provided, however, that each partial prepayment shall be in the principal amount of at least One Hundred Thousand Dollars (\$100,000)

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or an integral multiple thereof, and further provided, that Vendee shall pay a prepayment premium at Two and One-Half Per Cent (2-1/2%) of the principal amount so prepaid. All prepayments made pursuant to the provisions of this paragraph shall be applied to prepay ratably, in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendor will promptly furnish to the Vendee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendee may request, calculated as provided in this Article 4 hereof. Notwithstanding the foregoing, there shall be no prepayment penalty in the event of a Casualty Occurrence, regardless of when it occurs. Notwithstanding the preceding provisions of this subparagraph for prepayment, Lendee shall (during the period commencing six (6) months after the Closing Date and ending Twenty-Four (24) months after the Closing Date) have the right, but not the obligation, to pre-pay the Conditional Sale Indebtedness without prepayment premium plus all other amounts due and owing in whole but not in part, so long as Lender has not exercised its rights under Section 3 of that certain guarantee agreement between the Guarantor and the Lender.

The Vendor, shall make or cause to be made, on the Closing Date as herein defined with respect to the Units delivered on or prior to said Closing Date, payment for the respective Units to the Builder in accordance with the Purchase Order upon compliance by the Owner and the Lender with their obligations under Paragraph 2 of the Finance Agreement; provided that there shall have been delivered to the Vendor (with an executed counterpart to the Vendee and, in the case of legal opinions, an executed counterpart addressed to Vendee), on the Closing Date, the following documents, in form and substance satisfactory to it and to its counsel, in such number of counterparts as may be reasonably requested by said counsel:

(a) A bill of sale from the Builder to the Vendor transferring to the Vendor title to the Units then being settled for under the Purchase Order warranting to the Vendor (i) that, at the time of delivery of such Units, the Builder had legal title to such Units and good and lawful right to sell such Units and (ii) that, at the time of delivery of such Units, title to such Units was free of all claims, liens, security interests and other encumbrances of any nature, and covenanting to defend the title to such Units against the claims and demands of all persons whomsoever;

(b) A Certificate or Certificates of Acceptance with respect to the Units as contemplated by Article 3 hereof;

(c) An invoice of the Builder addressed to the Vendor for the Units accompanied by or having endorsed thereon a certification by the Vendee as to the correctness of the prices of such Units;

(d) Those opinions of counsel for Vendee, Manager, Lessee, Vendor, Builder, Guarantor and Messrs. Morgan, Lewis & Bockius, set forth in subparagraphs (d), (e), (f), (g), (h), (i) and (j) in Paragraph 6 of the Assignment;

(e) A receipt from the Builder for any payments made to the Builder under the Purchase Order.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee, the Manager (as agent for the Vendee) or the Lessee as provided in this Agreement, the Management Agreement and the Lease. Any and all additions to the Equipment and any and all parts installed on and additions and replacements made to any Unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and shall be included in the term "Equipment" as used in this Agreement. (All such security title and security interest in the Equipment hereinabove retained by the Vendor and any such accessions are hereinafter called collectively, the "Security Title".)

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, at the expense of the Vendee will (a) execute a bill or bills of sale for the Equipment transferring its Security Title thereto and property therein to the Vendee, or upon its order, free of

all liens, security interests, and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording, or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than income taxes, gross receipts taxes except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes and franchise taxes measured by net income based upon such payments) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions"), all of which Impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of Vendor's ownership of Security Title thereto and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under

no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property, or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Vendor directly and, to the extent funds are not otherwise available, paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement, and shall bear interest at the same rate as the Conditional Sale Indebtedness from the date of payment by Vendor to and including the date of reimbursement by Vendee.

ARTICLE 7. Maintenance, Casualty Occurrences, Insurance. The Vendee will at all times and at its own expense, maintain and keep the Equipment or cause the Equipment to be maintained and kept, in good repair and efficient condition and working order, eligible for interchange with other railroads pursuant to AAR Interchange Standards. The Vendee shall supply all parts, services and other items required in the operation and maintenance of the Equipment. All parts, replacements, substitutions and additions to or for any Equipment shall immediately become Equipment and shall constitute accessions to the Equipment subject to all the terms and conditions of this Agreement.

In the event that any Unit of the Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged, from any cause whatsoever, taken or requisitioned by condemnation or otherwise, or there shall occur any other termination of use of any Unit regardless of the cause (each such occurrence being herein called a "Casualty Occurrence"), the Vendee shall, promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, cause the Vendor to be fully notified in regard thereto (including without limitation, a full description of the Casualty Occurrence) and within Sixty (60) days thereafter, Vendee shall pay to Vendor a sum equal to the aggregate Casualty Value (as hereinafter defined) of such Unit as of the date of such payment. Concurrently with each payment of Casualty Value pursuant to this Article 7, the Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of each Unit as to which such payment is being made. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of

each installment, the Conditional Sale Indebtedness and the Vendor will promptly furnish to the Vendee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendee may request.

Upon payment by the Vendee to the Vendor of the Casualty Value of any Unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and interest in such Unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee and without liability to the Vendor, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such Unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such Unit.

The Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the Invoiced Purchase Price attributable to such Unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Invoiced Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each Unit of the Equipment in like proportion as the Invoiced Purchase Price of such Unit bears to the aggregate Invoiced Purchase Price of the Equipment.

Any condemnation payments, insurance proceeds or other payments resulting from a Casualty Occurrence received by the Vendor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of a Casualty Occurrence pursuant to the second paragraph of this Article. If the Vendor shall receive any such payments in respect of such Units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article without deduction for such payments, or if such payments received by Vendor are in excess of the Casualty Value of the Unit, the Vendor shall pay such payments or such excess, as the case may be, to the Vendee provided that no event of default shall have occurred and be continuing hereunder. All proceeds received by the Vendor in respect of any Unit or Units of Equipment not

suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damages to such Unit in respect of which such proceeds were paid has been fully repaired, or shall be disbursed upon written request of Vendee to any third party in payment for such repairs.

The Vendee shall cause to be procured, maintained and paid for, by itself or its designee, with insurers acceptable to Vendor, insurance in an amount at all times at least equal to the Casualty Value of the Units of Equipment then subject to this Agreement, subject to a deductible not to exceed Five Hundred Dollars (\$500.00), insuring against loss and destruction of, and damage to, each such Unit arising out of theft, loss, damage, destruction, fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Manager.

The Vendee shall further maintain or cause to be maintained with reputable insurers acceptable to the Vendor public liability and property damage insurance with respect to the Equipment in amounts not less than the greater of (a) the amounts of insurance maintained by the Vendee, Manager, or Lessee with respect to railroad equipment of a similar kind as the Equipment owned or leased by the Vendee, or (b) bodily injury and property damage liability insurance in an amount not less than \$5,000,000. Each liability insurance policy shall be primary without right of contribution from any other insurance which is carried by the Vendor and shall expressly provide that all of the limits thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

The Vendee warrants that the foregoing insurance coverage shall be in effect at the execution of this Agreement. Such insurance shall (i) name the Vendor and any other holder of a security interest in the Units of Equipment as insureds or additional insureds in addition to the Vendee and the Manager with losses to be payable to any holder of a security interest, (ii) provide that the policies will not be invalidated as against the Vendor or any holder of a security interest in the Units of Equipment because of any violation of a condition or warranty of the policy or application thereof by the Vendee, Manager or Lessee and (iii) provide that the policies may be materially altered or

cancelled by the insurer only after thirty (30) days prior written notice to the Vendor and any holder of a security interest in the Equipment and Vendee.

ARTICLE 8. Reports and Inspections. On or before May 31 in each year, commencing with the year 1980, the Vendee shall cause to be furnished to the Vendor an accurate statement: (a) setting forth as of the preceding February 28 (i) the amount, description and numbers of all Units of the Equipment then subject to this Agreement, (ii) the amount, description and numbers of all Units of the Equipment that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during its preceding fiscal year (or since the date of this Agreement in the case of the first such statement), and (iii) the dollar amount spent in the maintenance and repair of each Unit during its preceding fiscal year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request; and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the records of the Vendee and any assignee of Vendee with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

Vendee shall also furnish, or cause to be furnished to Vendor on or before Ninety (90) days following the end of its fiscal year in each year during the term of the Agreement, commencing with the year 1979, audited Financial Statements (or in the case of Vendee, certified by an officer of such party) prepared in accordance with generally accepted accounting principles consistently applied of the Vendee, the Manager and any other party which shall replace the Manager as manager of the Equipment or as lessee of the Equipment under a lease providing for use of the Equipment by such lessee for a period of not less than one (1) year.

The Vendee shall prepare and deliver to the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Vendor) all reports (other than income tax returns), if any, relating to maintenance, registration and operation of the Equipment required to be filed by the Vendor with any

federal, state or other regulatory agency by reason of the ownership by the Vendor of Security Title to the Equipment or the provisions hereof.

ARTICLE 9. Marking of Equipment. The Vendee will cause each Unit of the Equipment to be kept numbered with the identifying number of the Lessee set forth in Annex A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such Unit to be placed in operation or exercise any control or dominion over the same until such numbers and markings shall have been made thereon and will replace or will cause to be replaced promptly any such numbers and markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any Unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Vendee and/or the Manager and/or the Lessee or their respective affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will use its best efforts to cause the Manager, the Lessee and every manager or user of the Equipment to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all

laws of the jurisdictions in which its or such manager's or user's operations involving the Equipment may extend, with the interchange rules of the AAR and with all lawful rules of the Department of Transportation, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws or rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as no Event of Default shall have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may contract with the Manager for the maintenance and management of the Equipment as provided in the Management Agreement, and the Manager, as Vendee's Agent, may contract with the Lessee for the maintenance and use of the Equipment as provided in the Lease, but the rights of the Manager and Lessee shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an event of default under and as defined in the Lease without the prior written consent of the Vendor, which consent shall not be unreasonably withheld, and hereby further agrees to furnish to the Vendor copies of all summons, writs, processes and other documents served by it upon the Manager or served by the Manager upon it in connection therewith. The Management Agreement and the Lease shall not be amended, modified or terminated by the Vendee without the prior written consent of the Vendor, which consent shall not be unreasonably withheld.

So long as no Event of Default shall have occurred and be continuing under this Agreement, the Equipment may, on and subject to all the terms and conditions of this

Agreement, be used (i) upon the lines of railroad owned or operated by the Manager or its affiliates (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Manager or any such affiliate has trackage or other operating rights or over which railroad equipment of the Manager or any such affiliate is regularly operated pursuant to contract, (ii) upon the lines of any railroad owned or operated by the Lessee or its affiliates, or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and (iii) upon lines of railroad of connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements; provided, however, that the Vendee shall not assign or permit the assignment of any Unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America; and provided, further, that at no time shall Vendee permit more than ten percent (10%) of the Units to be outside the United States of America.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or their successors or assigns which, if unpaid, might become a lien, charge, or security interest on or with respect to the Equipment, or any Unit thereof, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement, and shall bear interest at the same rate as the Conditional Sale Indebtedness from the date of payment by Vendor to and including the date of reimbursement by Vendee.

This covenant will not be deemed breached by reason of liens for taxes, assessments, or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the Income and Proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any Unit thereof, or the Vendee's interest in the Management Agreement and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Management Agreement and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor and the Lender from and against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to reasonable counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the assignment by Vendor to Lender, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage, or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims, and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder, or resulting from the violation by Vendor of any present law, regulation or order of any governmental agency or subdivision thereof to which Vendor is subject or any present or future agreement

to which Vendor is a party. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of Security Title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Unit of or all the Equipment.

Unless Vendor elects to exercise its rights and remedies against Builder under the Purchase Agreement and Bills of Sale, and so long as no Event of Default has occurred and is continuing hereunder, Vendor hereby authorizes the Vendee, to the exclusion of the Vendor, to exercise in Vendor's name, all rights and powers of the Vendor under the Purchase Agreement and the Bills of Sale executed pursuant thereto and to retain any recovery or benefit resulting from the enforcement of any warranty or indemnity under the Purchase Agreement in respect of the Equipment, except that the Vendee shall not enter into any change order, amendment, modification or supplement to the Purchase Agreement without the prior written consent or counter signature of the Vendor. VENDOR IS NOT A MANUFACTURER OF THE EQUIPMENT, AND HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO MERCHANTABILITY, FITNESS FOR ANY PURPOSE, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH, OR FOR THE PURPOSES OR USES OF VENDEE, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR ANY CHARACTER EXPRESSED OR IMPLIED, WITH RESPECT THERETO. However, each of Vendor and Rex does hereby represent and warrant that it has not taken any action resulting in the creation of any claim, lien or other encumbrance on title to the Equipment, and that effective upon the Closing Date, it will have conveyed to Vendee, subject to the terms and conditions hereof and the retention of security title hereunder, the title conveyed to it by the Builder.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any Unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor; provided, however, Vendee shall have the right to transfer and assign its rights and delegate all of its duties hereunder to a wholly-owned subsidiary of Vendee,

provided such subsidiary assumes the duties and obligations of Vendee hereunder, and under any other documents or agreements relating hereto, or to the Equipment. In the event of such an assignment and delegation hereunder, Vendee will be released from any and all obligations hereunder, it being intended that such assignment act as a novation with the assignee. The Vendee, or upon assignment hereunder, any assignee, shall at all times maintain its corporate existence, and it shall not consolidate with or merge into any other corporation or convey, transfer or lease substantially all of its assets as an entirety to any other Person (which means any individual, corporation, partnership, joint venture, association, trust, unincorporated organization or government or agency thereof), without the prior written consent of Vendor.

All or any of the rights, benefits, and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that it is the custom of railroad equipment manufacturers and sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. THE VENDEE EXPRESSLY REPRESENTS,

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FOR THE PURPOSE OF ASSURANCE TO ANY PERSON, FIRM OR CORPORATION CONSIDERING THE ACQUISITION OF THIS AGREEMENT OR OF ALL OR ANY OF THE RIGHTS OF THE VENDOR HEREUNDER, AND FOR THE PURPOSE OF INDUCING SUCH ACQUISITION, THAT IN THE EVENT OF SUCH ASSIGNMENT BY THE VENDOR AS HEREINBEFORE PROVIDED, THE RIGHTS OF SUCH ASSIGNEE TO THE ENTIRE UNPAID INDEBTEDNESS IN RESPECT OF THE PURCHASE PRICE OF THE EQUIPMENT AND THE MAINTENANCE ESCROW ACCOUNT OR SUCH PART THEREOF AS MAY BE ASSIGNED, TOGETHER WITH INTEREST THEREON, AS WELL AS ANY OTHER RIGHTS HEREUNDER WHICH MAY BE SO ASSIGNED, SHALL NOT BE SUBJECT TO ANY DEFENSE, SETOFF, COUNTERCLAIM, OR RECOUPMENT WHATSOEVER ARISING OUT OF ANY BREACH OF ANY OBLIGATION OF THE VENDOR WITH RESPECT TO THE EQUIPMENT NOR SUBJECT TO ANY DEFENSE, SETOFF, COUNTERCLAIM OR RECOUPMENT WHATSOEVER ARISING BY REASON OF ANY OTHER INDEBTEDNESS OR LIABILITY AT ANY TIME OWING TO THE VENDEE BY THE VENDOR. ANY AND ALL SUCH OBLIGATIONS HOWSOEVER ARISING, SHALL BE AND REMAIN ENFORCEABLE BY THE VENDEE AGAINST AND ONLY AGAINST THE VENDOR.

In the event of any such assignment or successive assignments by the Vendor, the Vendee will, upon request by the assignee, change, or cause to be changed, the markings on each side of each Unit of the Equipment so as to be consistent with the interest of such assignee in the Equipment, to the extent necessary to conform to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of the assignment contemplated by the Assignment shall be borne by the Vendee and, the cost of such markings in the case of any subsequent assignment, if any, of all or less than all of such Equipment, shall be borne by such assignee.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default ("Event of Default") shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any indebtedness in respect of the Purchase Price or Maintenance Escrow Account or any other sum payable by the Vendee as provided in this Agreement within five (5) days after notice; or

(b) the Vendee shall, for more than thirty (30) days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, the Manage-

ment Agreement, the Lease, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance or if compliance or performance with such terms and provisions cannot be completed within thirty (30) days, Vendee shall have failed to take the necessary steps to commence to cure the failure to comply or perform, such steps to be satisfactory to the Vendor;

(c) any proceeding shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit the readjustment of the obligations of the Vendee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), if all the obligations of the Vendee under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or for its property in connection with any proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within Thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(d) the Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Unit of the Equipment, and this Agreement or any interest therein or on any Unit of Equipment, as the case may be, shall not be reassigned or retransferred within ten (10) days of written notice from the Vendor to do so; or

(e) a breach by Manager in the performance of its duties under the Management Agreement entered into with respect to the Equipment, (which breach shall have materially impaired or adversely affected the revenues generated by the Equipment), shall have occurred and be continuing for a period of thirty (30) days after notice from Vendor (hereinafter "Default") and such Default shall continue for a period of

ninety (90) days without the Vendee, with written consent of Vendor, having terminated the Management Agreement, and entered into a new management agreement or otherwise provided for the management of the Equipment by a manager, acceptable to the Vendor in its sole and absolute discretion, upon terms acceptable to the Vendor in its sole and absolute discretion; or

(f) an Event of Default (as defined in the Lease) shall have occurred under the Lease and shall be continuing for Ninety (90) days without the Vendee, with consent of Vendor, having terminated the Lease pursuant to the terms thereof, and entered into a new lease or otherwise provided for the use of the Equipment by a lessee or other user acceptable to the Vendor, in its sole discretion, upon terms acceptable to Vendor, in its sole and absolute discretion;

(g) a Unit shall be operated or allowed to operate without the insurance required by Article 7 hereof in full force and effect;

then at any time after the occurrence of any Event of Default and so long as such event shall be continuing the Vendor may, upon written notice to the Vendee, the Lessee and the Manager, upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, (i) in accordance with Section 1 of the Management Agreement Assignment cause the Management Agreement, (upon occurrence of an Event of Default under subsection (e) hereof) or in accordance with Section 1 of the Lease Assignment Agreement the Lease (upon occurrence of an Event of Default under subsection (f) hereof) as they relate to the Equipment and any other agreement with respect to the Equipment, or any Unit or Units thereof, then in effect immediately upon such notice to terminate with respect to the Equipment and/or (ii) declare the entire unpaid Conditional Sale Indebtedness together with the interest thereon then accrued and unpaid, together with all other amounts then due and owing immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Event of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable. Upon an Event of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, together with all other amounts due hereunder with interest as aforesaid, and to collect such judgment out of any property of the Vendee, wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an Event of Default under this Agreement.

The Vendor may, at its election, waive any such Event of Default and its consequences and rescind and annul any Event of Default or notice of termination of the Management Agreement or any such other agreement by notice to the Vendee and the Manager in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such Event of Default had occurred and notice of termination of the Management Agreement, the Lease or any such other agreement had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of an Event of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, Manager or Lessee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk as Vendor shall direct:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any Unit or Units of the Equipment have been interchanged to return the Unit or Units so interchanged) cause the Equipment to be placed upon such storage tracks of the Manager or Lessee as the Vendor reasonably may designate; or, in the absence of such designation,

as the Vendee or Manager may select; provided, however, that such storage on the tracks of the Manager or Lessee will not be required if such storage will interfere with the operations of the railroad of the Manager or Lessee;

(b) permit the Vendor to store the Equipment on such tracks or other premises at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Manager or the Lessee or any of their affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such Unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee (but not against any officer, shareholder or agent of Vendee) requiring specific performance hereof and Vendor hereby irrevocably appoints Vendor as attorney in fact to execute any and all documents, instruments and notices, in the name and on behalf of Vendee, to cause the Equipment to be delivered hereunder or comply with the terms of any court decree. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit of the Equipment in any reasonable manner.

At any time during the continuance of Event of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, or any other party claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to

the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Invoiced Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

The Vendee shall be given written notice of such sale not less than ten days prior thereto, be telegram or registered mail addressed as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

If an Event of Default has occurred and Vendor has accelerated the Conditional Sale Indebtedness under Article 15 hereof, the Vendee hereby appoints the Vendor their exclusive marketing agent with respect to any and all interest of Vendee in the Equipment, which appointment is coupled with an interest and is irrevocable. In its capacity as marketing agent hereunder, Vendor shall have the absolute right to sell, lease transfer or otherwise dispose of all or any part of the Equipment, to any party whomsoever, as Vendor shall in the exercise of its reasonable discretion, deem advisable. In furtherance of Vendor's rights hereunder Vendee hereby agrees to execute any and all documents, agreements, instruments, releases and notices requested by Vendor to sell lease, transfer or otherwise dispose of the Equipment, or any Unit thereof; and further hereby appoints

Vendor as attorney-in-fact to execute any and all documents, instruments, notices or agreements for the sale, lease, transfer or other disposition of the Equipment, or any Unit, in the name and on behalf of Vendee, including without limitation bills of sale and leases. In the event the Equipment is sold and/or leased, after an Event of Default and acceleration of the Conditional Sale Indebtedness, Vendee hereby agrees and shall pay to the Vendor an amount equal to Five Percent (5%) of the outstanding principal balance of the Conditional Sale Indebtedness with respect to each such Unit sold, and/or leased. Notwithstanding the provisions of this subparagraph, the sums of money realized by Vendor hereunder shall be applied in accordance with the provisions of this Article 16.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee, the Lessee or the Manager shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

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The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

Except as herein agreed to the contrary, the foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Maintenance Escrow Account. The Vendee shall pay to Vendor, to be held in trust, subject to the provisions hereof, by Vendor and invested in accordance with the provisions of 6(c) of the Finance Agreement, one (1) quarterly payment in arrears on May 31, 1979 of One Hundred Twenty Dollars (\$120) per Unit then subject to this Agreement, and One Hundred Seventy-Seven (177) monthly payments in arrears on the last day of each month, commencing June 30, 1979, to and including January 30, 1994, all such payments in an amount equal to Forty Dollars (\$40) per Unit then subject to this Agreement (hereinafter called "Maintenance Escrow Account"). So long as no Event of Default has occurred and is continuing, Vendee shall have the right, upon five (5) days prior written request, to withdraw funds from the Maintenance Escrow Account when necessary to maintain such Units in the condition required pursuant to Article 7 hereof; provided, however, Vendee shall submit to Vendor satisfactory evidence of the items of repair, and such other evidence or documents as Vendor may reasonably request, including without limitation, satisfactory evidence of compliance with all the terms and provisions of this Agreement; and provided, further, that at any time after the Sixth (6th) year of the term of this Agreement, the balance of the Maintenance Escrow Account shall be in an amount of not less than Two Hundred Thousand Dollars (\$200,000), and Vendee hereby agrees to deposit with Vendor hereunder any sums necessary to establish and maintain the minimum balance required herein, which minimum balance shall be reduced by an amount equal to Two Thousand Dollars (\$2,000) for each Unit which undergoes a major rebuilding after the Sixth (6th) year of the term hereof.

Promptly upon the occurrence of an Event of Default, Vendor shall have the absolute right to retain the Maintenance Escrow Account and apply it, in its sole discretion, as

additional security for the Conditional Sale Indebtedness, and all other sums due and owing. Vendor shall have no liability resulting from the retention and investment of the Maintenance Escrow Account, so long as it complies with the terms of 6(c) of the Finance Agreement. Any amounts held by Lender in the Maintenance Escrow Account shall be paid to Vendee upon compliance with the conditions contained in Article 5 hereof for passage of title to the Equipment.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. Prior to the delivery and acceptance of any Unit of the Equipment, the Vendee will cause this Agreement and prior to the settlement for any Unit, the Vendee will cause any assignments hereof by the Vendee and any amendments or supplements hereto and thereto, in each case to be filed, registered, recorded, or deposited and refiled, reregistered, rerecorded, or redeposited, with the ICC in accordance with 49 U.S.C. 11303. The Vendee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States of America, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Vendee will promptly furnish to the Vendor evidences of such filing,

registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel.

ARTICLE 20. Payment of Expenses. The Vendee will pay all reasonable costs and expenses, (other than the fees and expenses of the Builder, Vendor, Rex and its respective attorneys), payment of which shall not be illegal under any laws of the United States, any State or any foreign jurisdiction incident to this Agreement, the Finance Agreement, the Assignment, the Lease Agreement Assignment and the Management Agreement Assignment, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for Lender.

ARTICLE 21. Article Headings; Effect and Modification of Agreement; Immunities. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

As between the Vendor and the Vendee, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other prior agreements, oral, or written, between them with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed in the United States certified mails, postage prepaid to it at its chief place of business at the following specified addresses:

(a) to the Vendee,

Skiva International, Incorporated  
1350 Broadway  
New York, New York 10018  
Attention: Isaac Chehebar

with a copy to:

Seltzer & Sussman  
1250 Broadway  
New York, New York 10001  
Attention: Martin S. Sussman, Esq.

(b) to the Lessee,

Lenawee County Railroad Co., Inc.  
P.O. Box 278  
Adrian, Michigan 49221

(c) to the Lender,

The Provident Bank  
One East Fourth Street  
Cincinnati, Ohio 45202  
Attention: J. Lynn Brewbaker

with a copy to:

Keating, Muething & Klekamp  
One East Fourth Street  
Cincinnati, Ohio 45202  
Attention: Richard D. Siegel

(d) to the Vendor,

Rex Railways, Inc.  
616 Palisade Avenue  
Englewood Cliffs, New Jersey 07632

with a copy to:

Battle, Fowler, Jaffin, Pierce & Kheel  
280 Park Avenue  
New York, New York 10017  
Attention: Thomas V. Glynn

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303, such additional rights arising out of the filing, recording, registering, or depositing hereof and of any assignment hereof shall be filed, recorded, registered or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

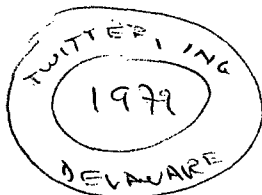
The Vendee to the fullest extent permitted by law (a) designates the United States District Court for the Southern District of Ohio, Western Division, as a forum where any and

all matters pertaining to this Agreement may be adjudicated, and (b) by the foregoing designation, consent to the jurisdiction and venue of such Court for the purpose of adjudicating any and all matters pertaining to this Agreement. Each party hereto not having an agent for service of process of record with the Secretary of State of the State of Ohio hereby irrevocably appoints the Secretary of State of the State of Ohio as the agent for service of process in any proceeding instituted hereunder and each party hereto agrees that service of process upon such agent, in accordance with the then-prevailing and applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to such party by United States registered mail at the address specified in Article 22 hereof, shall, upon receipt by such party, constitute proper service on such party for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this paragraph, any party hereto shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Agreement against the other in any other competent court.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent, shall be deemed the original counterpart and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

Attest:



Robert M. Huber

TWITTER, INC.,  
Vendor

By: Shawn Sullivan, Pres.

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SKIVA INTERNATIONAL, INCORPORATED,  
Vendee

Attest:

Martin S. Surman

BY:

Albert Chelban

REX RAILWAYS, INC.

(for the limited purposes of  
consenting to the last sentence  
of Article 13 and the sixth para-  
graph of Article 16)

Attest:

Mark A. Salitan

BY:

Robert M. Chelban, Pres.

STATE OF

New York

County of

Queens

SS

On this 22nd day of February, 1979, before me personally appeared Mark A. Salitan, to me personally known, who being by me duly sworn, says that he is the President of Twitter, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

Anne-Marie Farrell  
(Title of officer)

My commission expires

ANNE-MARIE FARRELL  
Notary Public, State of New York  
No. 41-6237476  
Qualified in Queens County  
Commission Expires March 30, 1980

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STATE OF *New York* )  
COUNTY OF *Queens* :SS:

On this 22nd day of February, 1979, before me personally appeared Albert Chehebar, to me personally known, who being by me duly sworn, says that he is the President of Skiva International, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

*Anne Marie Farrell*  
(Title of officer)  
ANNE-MARIE FARRELL  
Notary Public, State of New York  
No. 41-6237476  
Qualified in Queens County  
Commission Expires March 30, 1980

My commission expires \_\_\_\_\_

STATE OF *New York*  
County of *Queens* SS

On this 22nd day of February, 1979, before me personally appeared Mark A. Salitan, to me personally known, who being by me duly sworn, says that he is the Executive Vice-President of Rex Railways, Inc. that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

*Anne Marie Farrell*  
(Title of officer)  
ANNE-MARIE FARRELL  
Notary Public, State of New York  
No. 41-6237476  
Qualified in Queens County  
Commission Expires March 30, 1980

My commission expires \_\_\_\_\_

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ANNEX A  
TO  
CONDITIONAL SALE AGREEMENT

<u>Specifi- cations</u>	<u>Maximum Quantity</u>	<u>Lessee's Road Numbers (Both In- clusive</u>
70-Ton, 50'6" General Purpose Box Cars	100	LCRC 2001 - 2100

Delivery

February 15  
through  
March 15, at  
Bessemer,  
Alabama

Base Price/Unit

\$35,017

Aggregate Base Price

\$3,501,700

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**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

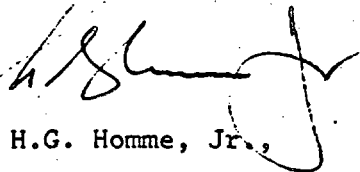
Mark A. Salitan  
Battle, Fowler, Jaffin, Pierce & Kheel  
280 Park Avenue  
New York, New York 10017

ATTENTION: Mr. Thomas E. Kruger

Dear MR. Salitan:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on February 22, 1979 at 4:40 PM , and assigned recordation number(s) 10131 and 10131-A

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)